

ORDER NO. 1867

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman;  
Mark Acton; and  
Nanci E. Langley

Competitive Product Prices  
Parcel Return Service  
Parcel Return Service Contract 5

Docket No. MC2014-4

Competitive Product Prices  
Parcel Return Service Contract 5 (MC2014-4)  
Negotiated Service Agreement

Docket No. CP2014-4

ORDER ADDING PARCEL RETURN SERVICE CONTRACT 5  
TO THE COMPETITIVE PRODUCT LIST

(Issued November 1, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Parcel Return Service Contract 5 to the competitive product list.<sup>1</sup> It is the successor agreement to the

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<sup>1</sup> Request of the United States Postal Service to Add Parcel Return Service Contract 5 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 23, 2013 (Request).

contract approved in Docket Nos. MC2011-6 and CP2011-33.<sup>2</sup> For the reasons discussed below, the Commission approves the Request.

## II. BACKGROUND

On October 23, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Parcel Return Service Contract 5 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.<sup>3</sup> Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product (Agreement), requested changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.<sup>4</sup>

On October 24, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an

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<sup>2</sup> See Docket Nos. MC2011-6 and CP2011-33, Order No. 602, Order Approving Parcel Return Service Contract 2 Negotiated Service Agreement, December 2, 2010; *see also* Docket Nos. MC2011-6 and CP2011-33, Order No. 1857, Order Granting Temporary Relief, October 23, 2013.

<sup>3</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

<sup>4</sup> In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. *See, e.g.*, Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

opportunity to comment.<sup>5</sup> On October 28, 2013, Chairman's Information Request No. 1 was issued.<sup>6</sup> The Postal Service filed its response on October 31, 2013.<sup>7</sup>

### III. COMMENTS

The Public Representative filed comments on October 31, 2013.<sup>8</sup> No other interested person submitted comments.

The Public Representative states that she has reviewed the Agreement, the Statement of Supporting Justification, and the financial data filed under seal. *Id.* at 2. Based on this review, the Public Representative concludes that the Agreement should be categorized as a competitive product and added to the competitive product list. *Id.* at 2-3. The Public Representative states that the Postal Service's assertions addressing the considerations of 39 U.S.C. § 3642 appear reasonable. *Id.* at 3. Based on these assertions, she concludes that the Agreement should be added to the competitive product list. *Id.*

Based on the financial model filed by the Postal Service, the Public Representative concludes that the Agreement should meet the requirements of 39 U.S.C. § 3633(a) during the first contract year. *Id.* She states that the Agreement contains periodic price adjustments, which she believes should permit revenues to cover costs over the lifetime of the contract. *Id.* at 4. The Public Representative notes that the Commission will be able to review the Agreement as part of its Annual Compliance Determination (ACD) and ensure that the Agreement continues to comply with the requirements of section 3633(a). *Id.*

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<sup>5</sup> Order No. 1861, Notice and Order Concerning the Addition of Parcel Return Service Contract 5 to Competitive Product List, October 24, 2013.

<sup>6</sup> Chairman's Information Request No. 1, October 28, 2013 (CHIR No. 1).

<sup>7</sup> Response of the United States Postal Service to Chairman's Information Request No. 1, October 31, 2013 (Response to CHIR No. 1).

<sup>8</sup> Public Representative Comments on Postal Service Request to Add Parcel Return Service Contract 5 to Competitive Product List, October 31, 2013 (PR Comments).

#### IV. SUPPLEMENTAL INFORMATION

CHIR No. 1 sought clarification on which contract years applied to a provision in Article I.F.4 of the Agreement. CHIR No. 1 at 1. The provision involved price calculation based on rolling four-quarter total volume. *Id.* In its response, the Postal Service states that the term “contract years” used in this provision applies to all contract years over the life of the contract. Response to CHIR No. 1 at 2.

#### V. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, the supporting data filed under seal, the Response to CHIR No.1, and the Public Representative’s comments.

*Product list requirements.* The Commission’s statutory responsibilities when evaluating the Request include assigning Parcel Return Service Contract 5 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. § 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Parcel Return Service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can, therefore, neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that the market for expedited delivery services is highly competitive and requires a substantial infrastructure, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service’s supporting justification, the Commission finds that Parcel Return

Service Contract 5 is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because Parcel Return Service Contract 5 is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the Agreement is expected to cover its costs in the first year.

In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs. Based on a review of the financial spreadsheet, the rates in the first year of the contract cover attributable costs. The Agreement contains a price adjustment provision that increases contract rates annually. *Id.* Attachment B at 7. The annual adjustment provision increases the likelihood that prices will cover attributable costs in the second and third years of the contract. However, the Commission will review the contract's cost coverage in the Commission's ACD to ensure that rates continue to cover costs in years two and three of the contract.

*Other considerations.* By its terms, the Agreement becomes effective one business day after the date that the Commission issues all necessary regulatory approvals. Request, Attachment B at 8. The Agreement is scheduled to expire three years after the effective date, unless, among other things, both parties mutually agree in writing to terminate the contract. *Id.* The contract also allows for a two-year renewal or extension upon mutual agreement in writing.<sup>9</sup>

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<sup>9</sup> *Id.* Should both parties agree to renew or extend the contract for two additional years, any such renewal or extension is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 CFR part 3015.

The contract contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least 7 days prior to the contract expiring. *Id.*<sup>10</sup> During the extension periods, prices will increase by an amount determined in accordance with the contract's annual adjustment provision. Request, Attachment B at 8. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically increase in the extension period, making it likely that the contract will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the Agreement terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone.

In conclusion, the Commission approves Parcel Return Service Contract 5 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

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<sup>10</sup> As the Commission noted in Order No. 1778 at 3, n.2, the Postal Service clarified that identical language in Priority Mail Contract 60 "contemplates the Postal Service filing any notices of extension with the Commission at least one week prior to the 3-year expiration date or the extended expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013; see *also* Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

## VI. ORDERING PARAGRAPHS

*It is ordered:*

1. Parcel Return Service Contract 5 (MC2014-4 and CP2014-4) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission if the Agreement terminates prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the Agreement terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2014-4 and CP2014-4. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.



Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Parcel Return Service Contract 5

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